



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Ms. Susan E. Tennyson
Supervising Attorney, Litigation Section
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-1087

Dear Ms. Tennyson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40302.

The Texas Department of Health (the "department") received a request for copies of the Texas Tier Two data, workplace chemical list, and the layout (floor plan) of the Sterling Refinery (Sterling Chemicals, Inc.), located in Texas City. You believe the requested information may be trade secret information that is exempted from public disclosure under section 552.110 of the Government Code. You have submitted the requested information to us for review.

Pursuant to section 552.305, we notified Sterling Chemicals, Inc. ("Sterling") of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. However, Sterling did not respond to our notification.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a

formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added).¹ Neither the department nor Sterling has demonstrated that any of the requested information constitutes trade secrets of Sterling. Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

Ref.: ID# 40302

Enclosures: Submitted documents

cc: Ms. Laylan Copelin
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P.O. Box 670
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(w/o enclosures)

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